

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

JENNIFER VANDERSTOK, *et al.*,

Plaintiffs,

v.

BLACKHAWK MANUFACTURING GROUP INC., *et al.*,

Intervenor-Plaintiffs,

v.

MERRICK GARLAND, in his official capacity as Attorney
General of the United States, *et al.*,

Defendants.

Case No. 4:22-cv-00691-O

**MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF OF
GUN OWNERS FOR SAFETY AND
INDIVIDUAL CO-AMICI**

Gun Owners for Safety and five individuals affiliated with the organization (collectively, “Amici”) respectfully move for leave to file an amici curiae brief in support of Defendants’ opposition to Plaintiffs’ and Intervenor-Plaintiffs’ motions for summary judgment and Defendants’ cross-motion for summary judgment. Amici were previously granted leave to file an amici curiae brief in this case, in relation to the preliminary injunction proceedings. Amici hereby seek leave to submit the proposed brief, attached as Exhibit A, to bring to the Court’s attention unique and important perspectives that are not

already discussed by the parties, and which are directly relevant to the issues presented in the parties' cross-motions for summary judgment. In particular, the proposed brief addresses Plaintiffs' and Intervenor-Plaintiffs' factual and legal assertions regarding the scope of the Rule under review and offers the Court reliable information on the real-world impacts of its pending decision. As the proposed brief explains, the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") Final Rule 2021R-05F, entitled Definition of "Frame or Receiver" and Identification of Firearms (the "Rule"), does not impact most at-home gun makers, and does not impose serious hardship on law-abiding gun owners.

Pursuant to L.R. 7.1(b)(2), counsel for Amici informed counsel for Plaintiffs, Intervenor-Plaintiffs, and Defendants of Amici's intent to file an amici curiae brief in relation to the summary judgment stage of this case. In response: Defendants consented to the filing of the brief; Intervenor-Plaintiffs Defense Distributed and Second Amendment Foundation, Inc. stated that they do not oppose the filing of the brief; and Plaintiffs and Intervenor-Plaintiff BlackHawk Manufacturing Group, Inc. stated that they take no position on this motion.

Gun Owners for Safety and the five affiliated individuals respectfully request that the Court grant this motion and accept the proposed amici curiae brief.

LEGAL STANDARD

Although no Federal Rule of Civil Procedure governs the filing of an amicus brief in district court, it is well-established that amicus briefs can serve a useful role. As then-Judge Alito noted with respect to amicus briefs, "the fundamental assumption of our adversary system [is] that strong (but fair) advocacy on behalf of opposing views promotes

sound decision making. Thus, an amicus who makes a strong but responsible presentation in support of a party can truly serve as the court’s friend.” *Neonatology Assocs. v. Comm’r of Internal Revenue*, 293 F.3d 128, 131 (3d Cir. 2002). “Even when a party is very well represented, an amicus may provide important assistance to the court,” with contributions ranging from “collect[ing] background or factual references that merit judicial notice,” providing “particular expertise not possessed by any party to the case,” and “explain[ing] the impact a potential holding might have on an industry or other group.” *Id.* (quoting Luther T. Munford, *When Does the Curiae Need An Amicus?*, 1 J. App. Prac. & Process 279 (1999)). The Fifth Circuit likewise observes that “courts should welcome amicus briefs for one simple reason: ‘[I]t is for the honour of a court of justice to avoid error in their judgments.’” *Lefebure v. D’Aquila*, 15 F.4th 670, 675 (5th Cir. 2021) (citation omitted).

Consistent with these authorities, this Court has granted amicus briefs for similar reasons. *See, e.g.*, Order Granting Motion for Leave to File, *Texas et al. v. United States, et al.*, No. 4:18-cv-00167-O (N.D. Tex. May 5, 2018); Order Granting Motion to File Amicus Letter, *United States v. The Boeing Company*, 4:21-cr-5-O (N.D. Tex. April 29, 2022). The Court has likewise previously granted leave for the filing of amici briefs in this case at the preliminary injunction stage, including for Amici. *See* ECF Nos. 57-61.

ARGUMENT

Amici respectfully submit that the attached proposed brief provides relevant perspectives and arguments, and leave for filing should be granted.

Proposed amicus curiae **Gun Owners for Safety** is a united coalition of gun owners from varied backgrounds and political affiliations who believe lives can be saved through commonsense gun laws that do not infringe upon the civil rights of law-abiding gun owners. With chapters in Texas and across the country, including Colorado, Florida, Michigan, Minnesota, Montana, Pennsylvania, and Virginia, Gun Owners for Safety works to prevent gun violence while supporting and protecting Second Amendment rights. Gun Owners for Safety is comprised of over 20,000 experienced gun owners of all trades and hobbies, including law enforcement, military, hunting, sport shooting, collecting, and building guns. In Texas alone, Gun Owners for Safety has 1,200 gun owner members, including 60 volunteer ambassadors who have educated the public and lawmakers through such activities as hosting seminars and testifying before the State Legislature. Affiliated with Giffords, the gun safety organization co-founded and led by Congresswoman Gabrielle Giffords, a gun owner herself, Gun Owners for Safety fully respects the Second Amendment. Gun Owners for Safety is simultaneously devoted to encouraging safe and responsible gun ownership practices and promoting a shift in culture to inform Americans about ways to improve safe gun ownership, including commonsense gun laws.

The five affiliated individuals who are also proposed amici curiae are: **Jason Perry**, Deputy Engagement Director for Gun Owners for Safety; **Ryan Busse**, a Senior Advisor to Gun Owners for Safety and Giffords; **Jonathan Gold**, a Senior Ambassador for Gun Owners for Safety in Michigan; **Steven Kling**, a Senior Ambassador for Gun Owners for Safety in Texas; and **Scott Spreier**, a Senior Ambassador for Gun Owners for Safety in Texas. All five are experienced gun owners who have worked, respectively, as a

firefighter, an executive in the firearms industry, a firearm instructor, a member of the Army, and a member of the Air Force, and each is passionate about the importance of the serialization of firearms as a key tool for law enforcement to fight crime and bring justice for victims of gun violence.

As law-abiding gun owners, the members of Gun Owners for Safety and the five individual proposed Co-Amici have a direct and substantial interest in the subject matter of this case and in Plaintiffs' and Intervenor-Plaintiffs' challenges to the Rule in their motions for summary judgment and Defendants' cross-motion for summary judgment. As important, Gun Owners for Safety, its membership, and the individual Co-Amici provide a unique perspective on the questions at the heart of the parties' cross-motions.

Specifically, the proposed brief offers a different perspective on the Rule and its scope within the ATF's rule-making authority of the Gun Control Act and the Second Amendment. Additionally, the proposed brief offers an overview of kit-built "ghost guns," the problem the ATF sought to address. An accurate understanding of ghost guns and their use by criminal actors, not law-abiding gun owners, is necessary to appreciate the scope of the Rule under review. Gun Owners for Safety members, including two of the five individual Amici, have built guns from scratch, and have also built guns from fully or partially manufactured components, knowing firsthand the relative ease with which guns can be assembled from a kit of fully or partially finished parts. The coalition can therefore offer invaluable context for the true impact of the Rule on those who build guns at home, including the proposed individual Amici who engage in at-home gun making.

As Amici's proposed brief demonstrates, it is directly relevant to the Court's review of the parties' pending motions. This includes whether the Rule is narrowly tailored to avoid infringing on the rights of law-abiding citizens to build their own firearms (*see, e.g.*, Ex. A at 8-13), whether the Rule's narrow tailoring prevents criminal activity (*see, e.g.*, Ex. A at 14-24), and whether the Rule exceeds the authority granted by the Gun Control Act or the Second Amendment (*see, e.g.*, Ex. A at 24-27). By providing a unique and relevant perspective as an organization and individuals whose activities relate to ATF regulations, who can explain precisely which activities are affected by the Rule, and who can offer a perspective as gun owners who do not oppose commonsense firearm regulation, the proposed amici brief serves as a friend of the Court in its evaluation of the parties' motions.

CONCLUSION

Gun Owners for Safety and the five individual Co-Amici respectfully seek leave to file their proposed amici curiae brief.

Respectfully submitted, on February 22, 2023.

/s/ Rebecca Wernicke Anthony

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CERTIFICATE OF CONFERENCE

Counsel for Amici Curiae sought conference via e-mail on February 16, 2023, with counsel for both Plaintiffs and Defendants. Defendants consent to the filing of the brief. Intervenor-Plaintiffs Defense Distributed and Second Amendment Foundation, Inc. do not oppose the filing of the brief. Plaintiffs and Intervenor-Plaintiff BlackHawk Manufacturing Group, Inc. stated that they take no position on this motion.

/s/ Jennifer L. Swize

Jennifer L. Swize

CERTIFICATE OF SERVICE

I, Rebecca W. Anthony, hereby certify that on this 22nd day of February, 2023, a true and correct copy of the foregoing document was transmitted using the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record.

/s/ Rebecca Wernicke Anthony

Rebecca Wernicke Anthony